

Filed 10/21/20 by Clerk of Supreme Court

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2020 ND 217

Harold Ring,

Appellant

v.

North Dakota Department of Human Services,

Appellee

No. 20200072

Appeal from the District Court of Renville County, Northeast Judicial District,
the Honorable Anthony S. Benson, Judge.

REMANDED.

Opinion of the Court by VandeWalle, Justice.

Richard R. LeMay, Minot, ND, for appellant; submitted on brief.

Tiffany J. Grossman, Assistant Attorney General, Bismarck, ND, for appellee;
submitted on brief.

Ring v. NDDHS
No. 20200072

VandeWalle, Justice.

[¶1] This is an appeal from a district court order affirming the North Dakota Department of Human Service’s determination that Harold Ring was ineligible for Medicaid. Ring died after the Department issued its decision but before the district court affirmed. No party was substituted on Ring’s behalf for purposes of the district court proceedings. Nor has any party been substituted on his behalf for purposes of this appeal. We remand under N.D.R.App.P. 35(a)(3) for the district court to determine whether this action survived Ring’s death, and if it did, whether substitution of a party should be ordered under N.D.R.Civ.P. 25.

I

[¶2] When these proceedings began, Ring was ninety-six years old and living in the Good Samaritan Home in Mohall. An application for Medicaid was submitted on his behalf in April 2018. It was denied due to disqualifying transfers. Ring’s daughter, Nancy Ring, filed a second Medicaid application on Ring’s behalf in November 2018. The November application was also denied because Ring’s “client share (recipient liability) is more than the medical expenses.”

[¶3] Ring appealed, and an Administrative Law Judge (“ALJ”) conducted a hearing at the Good Samaritan Home. Ring’s attorney raised a defense to the disqualifying transfers arguing Ring was a vulnerable adult who was financially exploited. The ALJ found Ring was a vulnerable adult and there was “adequate testimony” he was financially exploited. However, the ALJ concluded the disqualifying transfer determination was made regarding the April application, which Ring did not appeal. The ALJ recommended the Department deny the application because “[t]he greater weight of the evidence also shows that Mr. Ring’s financial liability does not exceed his assets/income.” The Department adopted the ALJ’s recommendation.

[¶4] Ring filed a notice of appeal in the district court on June 14, 2019. Ring apparently died on November 16, 2019. The court affirmed the Department’s decision on December 31, 2019. On February 14, 2020, in Case Number 38-2020-PR-00003, the Good Samaritan Society filed a petition to be appointed special administrator of Ring’s estate “for the sole purpose of retaining legal counsel previously representing Harold Lloyd Ring to continue representation on behalf of the Estate on an administrative appeal of the North Dakota Department of Human Services denial of Harold Lloyd Ring’s Medicaid appeal.” The Department filed an objection to the petition asserting, based on its communications with Ring’s attorney, that Nancy Ring was Harold Ring’s successor.

[¶5] On March 6, 2020, Ring’s attorney filed a notice of appeal to this Court. He claims the Department’s imposition of a penalty period due to disqualifying transfers was inappropriate because Ring was a vulnerable adult who was financially exploited. On May 1, 2020, the Good Samaritan Society and the Department stipulated to dismissal of the probate petition because “a Special Administrator is not needed at this time.” The court dismissed the petition on May 5, 2020.

II

[¶6] The North Dakota Rules of Civil Procedure apply to administrative appeals when the Rules are not in conflict with the Administrative Agencies Practices Act. N.D.R.Civ.P. 81(b); *see also Lewis v. N.D. Workers Comp. Bureau*, 2000 ND 77, ¶ 7, 609 N.W.2d 445. We are unaware of any provision in the Act that deals with substitution of a party upon death in an administrative proceeding. We note the North Dakota Administrative Code provides rules applicable to deaths before the Department of Human Services has issued a decision on a Medicaid application. *See* N.D. Admin. Code § 75-01-03-03(9), (10). However, Ring died after the Department issued its decision and while the case was pending in the district court.

[¶7] Rule 25(a)(1), N.D.R.Civ.P., provides for substitution when a party has died during district court proceedings.

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion for substitution is not made within 90 days after service of a statement noting the death, the action by or against the decedent may be dismissed.

Rule 25 is a procedural rule; it does not provide substantive rights. *Missouri Slope Livestock Auction, Inc. v. Wachter*, 113 N.W.2d 222, 224 (N.D. 1962); see also *Triple Quest Inc. v. Cleveland Gear Co.*, 2001 ND 101, ¶ 16 n.1, 627 N.W.2d 379 ("Rule 25 does not substantively determine what actions survive the transfer of an interest; rather, it provides substitution procedures for an action that does survive.") (quoting *ELCA Enters., Inc. v. Sisco Equip. Rental & Sales, Inc.*, 53 F.3d 186, 191 (8th Cir. 1995)). When ruling on a motion for substitution upon a party's death, the district court must determine whether the case was extinguished by the death. *Inv'rs Title Ins. v. Herzig*, 2010 ND 138, ¶ 36, 785 N.W.2d 863. If the case was not extinguished, the court must determine whether the party seeking substitution is the proper successor. *Id.*

[¶8] In this case, neither side filed a notice of death or moved to substitute a party. The district court did not determine whether this action survived Ring's death, and if it did, whether a proper successor is available for substitution. Because these essential issues remain unresolved, we remand the case under N.D.R.App.P. 35(a)(3). Upon remand, the district court must promptly determine whether this action survived Ring's death, and if it did, whether substitution of a party should be ordered under N.D.R.Civ.P. 25.

III

[¶9] The case is remanded.

[¶10] Gerald W. VandeWalle
Jerod E. Tufte
Lisa Fair McEvers
Daniel J. Crothers
Jon J. Jensen, C.J.